

FILED

MAY 01 2008

PATRICK E. DUFFY, CLERK

By _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

THOMAS A. CONLEY,)	CV 08-19-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
MSP-WARDEN MIKE MAHONEY; UNIT)	
MANAGER GREG BUDD; and MENTAL)	
HEALTH DEPT. OF MSP,)	
)	
Defendants.)	
_____)	

Plaintiff Conley, a state prisoner proceeding pro se, has filed a Complaint under 42 U.S.C. § 1983 alleging violations of his Eighth Amendment rights stemming from his placement in a bare cell without clothing, bedding, toilet paper, and running water for eight days.

United States Magistrate Judge Keith Strong conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or

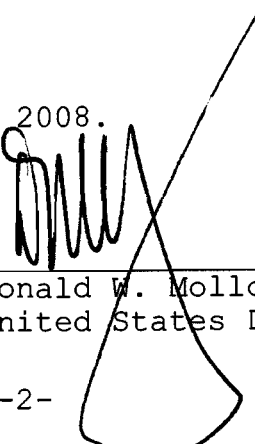
fails to state a claim upon which relief can be granted.

Judge Strong issued Findings and Recommendations in which he recommends that Plaintiff Conley's claim against Defendants Mahoney and Budd be served, but that the claim against the Mental Health Department of the Montana State Prison be dismissed for failure to state a claim. Judge Strong explains that the Mental Health Department is not a "person" within the meaning of Section 1983 and is therefore immune from suit under the Eleventh Amendment.

Plaintiff Conley did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong's Findings and Recommendations (Doc. No. 6) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the claims against Defendant Mental Health Department of the Montana State Prison are DISMISSED WITH PREJUDICE.

DATED this 1st day of May, 2008.



Donald W. Molloy, District Judge
United States District Court